

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL J. PENDLETON,	)	
	)	CIVIL ACTION NO. 3:02-cv-168
Petitioner,	)	
	)	JUDGE KIM R. GIBSON
v.	)	
	)	
ERIC TICE (as successor to Raymond	)	
Sobina), SUPERINTENDENT S.C.I.	)	
SOMERSET, <i>et al.</i> ,	)	
	)	
Respondents.	)	

MEMORANDUM ORDER

This matter is before Magistrate Judge Keith A. Pesto (the “Magistrate Judge”) in accordance with the Magistrates Act, 28 U.S.C. Section 636, and Local Civil Rule 72.

Petitioner Michael J. Pendleton’s (“Petitioner”) Petition for Writ of Habeas Corpus was placed on the docket on October 10, 2002. (ECF No. 3). On November 7, 2003, the Court issued an Order denying that Petition. (ECF No. 12 at 2).

On March 28, 2023, the Court received Petitioner’s “Motion for Relief From Judgment Based on Extraordinary Circumstances Under Rule 60(b)(6)[.]” (ECF No. 59).

On March 30, 2023, the Magistrate Judge issued a Report and Recommendation, recommending that the Motion at ECF No. 59 be denied without a certificate of appealability. (ECF No. 60 at 1). The Magistrate Judge explained that Petitioner points to items that “he argues constitute evidence of his actual innocence.” (*Id.* at 2). The Magistrate Judge stated that, if that evidence “should be considered, the place to present it is in the counseled habeas petition that is pending” at Case Number 3:18-cv-78. (*Id.*). Finally, the Magistrate Judge noted that the parties

were permitted to file written objections to the Report and Recommendation within fourteen days. (*Id.* at 3).

Petitioner has not filed Objections to the Report and Recommendation, and the timeframe for doing so has passed. Therefore, upon review of the Record and the Report and Recommendation under the applicable “reasoned consideration” standard, *see EEOC v. City of Long Branch*, 866 F.3d 93, 99–100 (3d Cir. 2017) (stating the standard of review when no timely objections are filed), and pursuant to Local Civil Rule 72.D.2, the Court finds that the Magistrate Judge’s recommendation regarding the disposition of this matter is correct. Specifically, the Court finds that, if the evidence and arguments that Petitioner raised in his Motion at ECF No. 59 are to be considered, the “place to present [them] is in the counseled habeas petition that is pending” at Case Number 3:18-cv-78. (ECF No. 60 at 2).<sup>1</sup>

Accordingly, the following order is entered:

**AND NOW**, this 7<sup>th</sup> day of March, 2024, **IT IS HEREBY ORDERED** that Petitioner Michael J. Pendleton’s Motion for Relief From Judgment Under Rule 60(b)(6) at ECF No. 59 is **DENIED WITHOUT PREJUDICE** for the reasons stated in the Report and Recommendation at ECF No. 60 and those set forth above.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED** for the reasons stated in the Report and Recommendation at ECF No. 60 and those outlined above. The denial of

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<sup>1</sup> Indeed, in conjunction with the Magistrate Judge’s reasoning in the Report and Recommendation, (ECF No. 60 at 2–3), the Court finds that, because it appears that Petitioner has been resentenced on all of his relevant counts of conviction, (Case No. 3:18-cv-78, ECF No. 23-1, ECF No. 23-2), the contentions he raises and evidence he references in his Motion at ECF No. 59 in this case are best raised by attempting to amend his Petition in Case Number 3:18-cv-78. (*See* Case No. 3:06-cv-46, ECF No. 45 at 2) (citing *Morgan v. Warden Butler Cty. Prison*, No. 20-2044, 2022 WL 4077168, at \*2 (3d Cir. Sept. 6, 2022)).

a certificate of appealability does not prevent Petitioner from appealing the order denying his Motion so long as he seeks, and obtains, a certificate of appealability from the Court of Appeals. *See* FED. R. APP. P. 22(b)(1), (2).

**IT IS FURTHER ORDERED** that the Report and Recommendation at ECF No. 60 is adopted as the opinion of the Court for its reasoning and conclusion regarding the appropriate disposition of Petitioner's Motion.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

**KIM R. GIBSON**  
**UNITED STATES DISTRICT JUDGE**

**Notice by U.S. Mail to:**

Michael J. Pendleton  
DY-1646  
SCI Somerset  
1600 Walters Mill Road  
Somerset, PA 15510-0002